PRATT (F.)

LEGAL RELATIONS OF INSANE PATIENTS.

ADDRESS

BY

FOSTER PRATT, M. D.,

PRESIDENT MICH. STATE MEDICAL SOCIETY.

DELIVERED BEFORE THE SOCIETY,

AT

LANSING, MAY 15, A. D. 1878.

PUBLISHED BY ORDER OF THE SOCIETY.

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Ladies and Gentlemen:

Medical jurisprudence is the joint product of medical and legal knowledge and reason. Its seminal principle is medical—its form is legal—and its purpose is justice. As the stereoscope gives body and bold relief to a surface of lights and shadows, so the binocular observation, by the two professions, of many questions in jurisprudence, gives due shape and definite proportion to the legal result. But differences of professional vision and disagreements in professional impression, often defeat all efforts to harmonize our dual observations of the same object. To obtain a harmonious and satisfactory legal result from our professional stereoscopes, three things, at least, are essential: first, a clear, distinct and definite mental photograph of the subject; second, equal power in the professional lenses; and third, an accurate and equal adjustment of their focal axes; if, under such conditions, medico-legal jurists study their subjects in the clear, bright light of reason the result is efficacious for good and rarely productive of evil.

PROFESSIONAL DIFFERENCES.

But there are differences in the nature and purposes of the two professions which seem to impose essential and necessary differences—if not antagonisms—in our relative attitude towards

many questions of common interest. Thus, law seeks for rules and precise definitions safely applicable to *all* or a majority of cases; medicine neither has such rules nor tolerates them, because, in medicine, they are not only absurd, but dangerous; hence, on questions of forensic medicine, lawyers and doctors are often at variance—the lawyer is content if he bring his case or its facts within an established rule—the doctor, discarding the rule, is content if he establish the essential fact. In medicine the pathological fact or condition is judged with sole reference to its effect on the *individual;* in law the same fact is judged with reference to its effect on the individual as a *social unit.* The doctor observes a fact with reference to the *health* of the man—the lawyer observes the same fact with reference to the *mental capacity* or the *moral responsibility* of the man. The doctor aims to benefit the *man*—the lawyer to benefit *society.* The doctor judges of men, sick of the same disease, by *unlike* rules, because men are physiologically unlike—but the lawyer judges men by *like* rules, because before the law all men are *equal* if not alike. In law certain precise, perhaps arbitrary, distinctions are possible and necessary and wise that in medicine are neither possible nor necessary nor wise. For example: puberty by law is inferred or declared to exist at the age of fourteen years. In medical physiology such a rule is not necessary, nor is it by any means true. Again: in law one who is 7,649 days old is an infant, a boy, a minor; while one who is 7,650 days old is a man—a distinction which in medicine is neither necessary nor useful.

And so, it seems to be a necessity, growing out of the nature of the two professions, that the medical idea must be mainly special, while the legal idea must be mainly general; and the two standpoints, *from* which and the two purposes *for* which the two professions observe the same facts, seem to impose a necessary difference in many of their conclusions,—a difference that too often becomes the occasion of wide disagreements and unseemly disputes. These can be avoided, if each will study the points from which and the purposes for which the other observes and judges the matter in controversy.

INSANITY THE CHIEF TOPIC OF MEDICAL JURISPRUDENCE.

Chief among the questions that lie within the domain of medical jurisprudence,—chief in its importance and chief in its intrinsic difficulties,—is the great question of INSANITY. It is an important question, because it signifies the destruction, more or less complete, not only of that grand attribute of reason which is man's chief glory and the guide of his individual life, but also because it is the destruction of that moral accountability by which, as a member of the social compact, his irrational infractions of human law must be measured and judged. It is a difficult question, primarily and mainly, because, as a malady of the mind, it is an almost inexplicable disturbance of an utterly inexplicable attribute of human nature.

THE ESSENCE OF MIND UNDEFINABLE.

That undefined and undefinable, but positive and essential human attribute that we call mind or soul, though carefully studied in all ages, has hitherto successfully concealed its essence and the nature of its physical union in him who holds it as his highest endowment and chief glory. Though he date its advent at the birth and its exit at the death of the body, he cannot, of himself, tell "whence it cometh or whither it goeth." Scalpels, chemical tests and microscopes alike fail to disclose the "vital spark," whether they question "the quick or the dead;" for in the dead it is absent; and if these curious intruders invade its living home, it is only to find the house warm, but the tenant gone. Though from the beginning it has had, in "these clay tenements," a "local habitation and a name," the tenant has never, in all the ages, been compelled to disclose its tenure or to defend its possession. Though spirit and flesh, as tenant and tenement, have often struggled with each other to the death, they have never yet stood face to face, for judgment, before any earthly tribunal. Though the tenant often stands, in spiritual grandeur and triumph, upon the very wrecks of its fleshly habitation, all attempted revenges, by the crazy

tenement, on its viewless tenant, only debase its own godlike functions into those of a gibbering ghoul or a dancing satyr. How presumptuous is dogmatism, and how becoming is humility in such a presence! The thoughtful observer of such mental phenomena, however curious and anxious he may be to penetrate their mysteries, like the ancient lawgiver, beside the bush that burned and was not consumed, will reverently hear and obey the voice of hidden power: "Put off thy shoes from off thy feet, for the place whereon thou standest is holy ground!"

REASON CAN BE INVESTIGATED ONLY BY REASON.

But though we be ignorant of the essence of mind, even as we are ignorant of the essence of wind, of sunlight, and of the thunder-bolt, it is permitted us, by reason, to investigate reason and to learn some of its laws of action and of physical association; and though the soul jealously evade the physical eye, even when armed with microscopic power, it coyly but kindly reveals the laws of its operations to the introspective eye of the mind, armed and aided only by reason. Though it never permits the withdrawal of the curtain from that marriage bed where matter weds with spirit, it does permit the ideal or intellectual children of that marriage to move in the stately phalanx of reason, or with the sportive graces of imagination, before the scrutinizing "mind's eye" of every Hamlet and Horatio. And if, among these ideal children of the mind, some are deformed or crippled or unwholesome or uncanny or unhappy, we are permitted to know, at least in part, the parent causes of their deficiency or defect. And so it is,—mind being intangible, its derangements and diseases are not known to us (figuratively speaking) as distinct forms or definite substances, but as it were *by the shadows they cast* across the life, and in this consists the chief difficulty of acquiring accurate knowledge and of forming just judgments of those various diseases of the mind that, grouped together, we call insanity.

THE GENERAL MEDICO-LEGAL RELATIONS OF INSANITY.

It is not possible, within the time proper for such an address to discuss the general medico-legal relations of insanity, nor, if it were possible, would it be profitable to such an audience. Many text-books, by medical and legal authors, treat fully and ably of the whole subject, and are accessible to all who wish to become familiar with its details.

On the general jurisprudence of insanity it is enough for me to say that the law views the insane person in a three-fold relation,—in relation to his disease, to his property, and to his conduct. While the real and legal peculiarities of each of these relations are distinct, they are also more or less mixed, occasionally, by the nature of the case and of the circumstances surrounding it. As medical men, we perform unlike functions towards these legal relations of insane persons, for, while in the *first* we are physicians *treating* a *disease*, in the second and third we act (if we act at all) only as experts, expressing our opinion respecting the *existence* or the *effect* of the disease.

THE RELATION OF PHYSICIANS AND FRIENDS TO THE INSANE.

While the law, suspicious of our agency as experts (like a jealous lover, not able to live with us, nor,—very well,—without us), has very clearly defined our position and rights as expert witnesses in cases involving insanity, it has been quite careless about our rights and immunities *while treating insanity as practicing physicians*, and equally careless in regard to the rights and interests of relatives and others having the care and custody of the insane during medical treatment.

It is to this latter branch of medical jurisprudence, full of importance to us as medical men, as well as to the insane, to their friends, to society, and to the State, that I ask your special attention. It is a topic on which the people seem to be profoundly ignorant; a topic on which even legal and medical knowledge is lamentably deficient; a topic, too, strangely slighted by the text-books, but a topic lying at the *very threshhold* of our professional relations to insanity.

Our relations to it are neither fanciful nor ideal—they are real and practical. The medical management of insanity is imposed on us as a duty, not only by our confidential and professional relations as family physicians, but by the great law of humanity. It is laid upon us as a necessity—a *necessity* I say—(unless we be recreant to all claims of duty and of human kindness), that we detect and determine the existence of insanity, and that we advise and act in the management or treatment of it *as a disease*. Before—sometimes long before—it furnishes a proper occasion for police interference to restrain the violence, and prevent the danger caused by insanity, we have had occasion to deal with it as a malady; nor do our functions end when the law has taken the case into its own hands. Our remedial agency follows it, and often becomes concurrent with it in the curative and controlling effort.

But recent events have demonstrated that, in the exercise of some of our highest functions and most delicate duties to insane patients, *we are in danger*—in danger from ignorant prejudices (a law to themselves when empaneled in the jury box), and in still greater danger from legal utterances recently applied to us by a court. It behooves us, therefore, to carefully examine our legal relations to insane patients.

The question thus thrust upon us is this: What are the legal rights, liabilities, and immunities of medical men who treat insanity as a disease, and of others who care for insane patients? Somewhat more tersely stated, my topic is—

THE LEGAL RELATIONS OF INSANE PATIENTS.

Fortunately for the human race, sanity is the normal or natural condition of its reason or intellect. The sane, whether regarded from a medical or a legal standpoint, constitute the overwhelming majority of mankind. Varying in different races and under different physical and moral conditions, we find the number of insane stands, in proportion to the total population, as one to eight hundred, one to one thousand, or one to twelve hundred, as the case may be. By the census of

1870 it was shown that, in the United States, the total number of insane (exclusive of idiots) was 37,432, which was a practical average of one in one thousand.

INSANITY A SYMPTOM OF DISEASE.

Sanity, therefore, being manifestly the normal condition of the human reason, we can safely assume that insanity is abnormal; and, furthermore, under the light of modern science, there is now a substantial agreement that it is a disease; or, to speak still more definitely and accurately, it is *not* a disease, but a symptom of many diseases or pathological disturbances; as, for example, in acute mania and in melancholia we have insanity as a symptom or a result of widely differing causes or conditions.

DEFINITION OF INSANITY.

There may be some, perhaps, who demand a more precise *definition* of insanity. Here it will be proper to remark that the doctor's definition of insanity, *for the practical purposes of his profession,* will and perhaps must differ from the definition given by the courts for legal purposes. Be this as it may, the two professions have never agreed, as yet, on a definition of insanity.

The old legal definition of insanity declared it to be "an inability to distinguish between right and wrong." This was shown, by the doctors, to be insufficient; because many who were insane on *one* subject were perfectly sane and knew right from wrong on every other subject. Driven from this, the courts next defined insanity to be or to consist in *delusion.* This was a closer approximation to the truth; but we followed this with a demonstration, that even when there is *no* delusion there may be and there often is an *insane* impulse overpowering the will and compelling an act known to be wrong and against which the reason revolts, but which the will cannot resist and because it cannot resist it, the man cannot, justly, be held responsible for it. And now (so far as known to the speaker), the courts are at sea, but endeavoring to discover a definition

of insanity on which they can safely build a legal superstructure for the proper legal accommodation of all classes of *non compotes*.

The law, of necessity, includes among its *non compotes* the idiotic, the infantile, and the senile. These can never be included in a medical definition of insanity, because their mental condition, in the main, is due to physiological or natural causes. The medical profession, on the other hand, must include, in its definition of insanity, those afflicted by the vagaries of hysteria, the delirium of fever, and other temporary disturbances of the nervous system caused by disease. But though these disturbances are destructive of intelligent and moral responsibility,—*while they last*,—they are so brief and so little or so seldom dependent on inherent insane tendencies, that it would be not only unwise but unjust to include them in a general legal definition of insanity.

Excluding, therefore, the idiotic, the infantile and the senile, medical ideas and purposes, in regard to insanity, are fulfilled by saying that—

Insanity is an impairment of the natural judgment or will, caused by physical defect, disease or injury, and causing irrational conduct.

By this definition we derive insanity from defect, disease or injury requiring treatment; it is a disease that impairs *judgment*—a term that includes memory and the mental and moral perceptions by which man is made an intelligent master of his own action and capable of distinguishing right from wrong—delusion from fact; it is a disease, too, that impairs the *will* by which (while it is free) man is made morally responsible for his acts; but however clear may be his intellectual and moral perceptions, if his *will* be impaired or overpowered by *insane impulse*, the foundation of his moral responsibility is gone. By this definition, the impairment of a man's mind and volition is ascertained by comparing him *sick* with himself *well*—his *diseased* with his former *natural* condition; it does not compare him, mentally weak by nature, with the average mental

strength of mankind, nor does it compare him, naturally eccentric, with the average symmetry of mental development. As from the disease we infer treatment, so from the known nature of the disease, as well as from the irrational conduct, we infer *restraint* as a part—a necessary part—of the *treatment*, and also as a police precaution, the extent of which will be measured by the danger to person or property.

This definition, I repeat, will serve medical ideas and purposes, but may not serve a just legal purpose, because it includes many classes of temporary mental aberration that the law does not and should not call insanity nor treat as such. It is nevertheless true that if, while in one of these brief aberrations, a person should do violence or injury, should make contracts or a will, the courts, on proper evidence, would undoubtedly treat it as a case of temporary insanity.

Having thus defined insanity in its medical sense, we are prepared to consider our professional relations to it, as *a disease requiring treatment*.

The Medical and Police Treatment of Insanity.

The treatment of the disease (whatever it may be that *causes* the insanity) may require moral, hygienic, or medicinal measures—all at once, or one at one time and another at another. The irrational conduct also (without regard to its danger) will require restraint as a part of the *treatment*. The degree of restraint will differ in different cases and at different times in the same case; but it must be constantly borne in mind that, whatever the degree, at some time, in some way and in some degree, physical or moral restraint belongs to the *purely professional treatment* of the case. Restraint, therefore, serves two purposes—it is a remedy for the *cure* of the disease, as well as a prudent preventive of dangerous conduct *caused* by the disease. But the two purposes for which the restraint is used, are, in their nature, as wide asunder as the poles—and that, too, notwithstanding the fact that it may be used for both purposes, in the same person, at the same time. As a part of the

therapeutical treatment of the disease, it performs the noble and loyal purpose of assisting to restore kingly reason to its native throne; while as a preventive of dangerous conduct, it becomes the vulgar though useful precaution of a legal police: it will not be equally curative, but it is equally applicable to the drunken brute as to the gentle Ophelia—to the degraded criminal as to the queenly Carlotta. Intelligent natural affection, medical science, and common humanity kindly conspire to demand the restraint even of the gentle lunatic for *his* benefit; but society, selfishly though properly, demands it (if he be violent) mainly for *its own* benefit; and the law, humane as well as just, should as sedulously protect the proper use of it when purely remedial as it enforces it for its own protection, whether remedial or not.

THE USES OF RESTRAINT AS A REMEDY.

To guard against misconception or misunderstanding of the purely medical meaning and uses of restraint in the treatment of insanity, it may be well to remark that it does not mean dungeons, nor handcuffs, nor gyves, nor straight-jackets; still less does it mean whipping, or scourging, or starving, or shower-baths, or any other manner or form of torture; but it is a restraint which makes medical, and moral, and hygienic treatment possible—it is a restraint which secures for the patient perfect "rest and seclusion from all that is harrassing or vexing,"—a restraint upon his freedom of action, such that the relaxation of it, in the direction of liberty to walk or ride out, "to visit places of amusement, to have money at command, to choose his own recreation" in green-houses or in flower-gardens, in games of ball, croquet, or billiards, or in a social dance, becomes an incentive to efforts of self-control; because, it is as he succeeds in this that his liberty of action is gradually restored—and fully restored when he is found to be able, without "surveillance or watching," to control himself in all things. It is, therefore, a means of cultivating and reëstablishing complete self-control, by making *fuller* self-

control the reward of *some* self-control—by which the complete self-control of a rational man is made, to the insane man, the highest prize of rational action and of good conduct. "This it is, and nothing more;" and this, essential as it is in the treatment of the disease, is impossible without the asylum or its equivalent.

WHO OPPOSE THE RESTRAINT.

I have thus emphasized the distinctions between the double or twofold functions of restraint in the treatment of insanity and in the management of the insane, for the reason that it is right here and because of the common failure to distinguish between the therapeutical and the police uses of restraint, that the medical profession who advise or those of our number who conduct the treatment of insanity, find themselves confronted by "a world in arms."

First, but hardest of all to meet, come the relatives and friends with quivering lips and tearful protests against restraint; following them, come the ignorant rabble, armed with scowling suspicions engendered by musty traditions of an ancient bedlam, and by fresh recollections of a county poor-house, who demand humane treatment of the insane; and last of all we encounter courts and lawyers and their heavy artillery of magna chartas, federal and state constitutions, and bills of rights, flanked and supported by the the professional small arms of statutory and common law—and all, as it seems, to impress on the perverse or the obtuse medical mind the truly grand but not very novel idea that "no person shall be deprived of liberty unless by due process of law."

Now all these protests, from all these classes, evidently spring from the natural impulses of humane hearts that, misdirected though they be, do credit to human nature if not to the general intelligence. Even the humane physician, who is the object of the ignorant suspicion, cannot but respect the primal impulse that sets all this machinery at work, even though it be based on the mistaken assumption that he is a brute or a fiend.

UNFOUNDED SUSPICIONS.

But against whom is all this array? Bad men there may be in our profession, as in what profession are they not? But do your governors and your senates appoint such men to manage the humane institutions of your State? Or are we all brutes and villains that these demonstrations of "swords and staves" are made against us? Are we, of all men, the only ones who lack those sweet humanities that "make the whole world kin," that we are the especial objects of suspicion and distrust?

Who, pray, led the world in practicing humanity to its reason-bereft children? Who taught the world that insanity was not a crime, nor the necessary consequence of sin, nor a special visitation of divine wrath for iniquity, nor a possession of the devil? Who taught the world that insanity was a disease to be treated and to be cured? Who opened their dungeon doors and led lunatics out into God's free air and sunshine? Who struck off their manacles? Who demonstrated that they were human beings and not brutes? Whose study and labor taught mankind how to cure a large majority of these pitiful and previously hopeless objects? Who inspired States with the desire to aid in restoring reason to its citizens? Who taught States how to accomplish this laudable desire? And who, after achieving all this, have directed the construction and the management of your asylums, and have so managed them as to send back to home and friends and useful employment thousands upon thousands of these stricken ones? Who, outside of the medical profession? What one man in any other profession in any part of the world dare stand up and say that *his* head or *his* hand was conspicuous in this humane revolution? And as against medical men, who have so successfully preached,—preached?—aye, and practiced this humane gospel—as against us, I say, what set or body of men can now successfully "arrogate to themselves, as if by a heaven-born right, the duty of protecting the interests of society" especially with the "implication that we are not to be considered?"

HURTFUL SUSPICIONS.

I do not assume, by any means, that doctors are better than other men,—I certainly shall not admit they are worse,—but I thus accentuate these demonstrations of suspicion against many who are among the best of our number, for the purpose of attracting your attention to the cause of them, which, so far as it relates to the insane, I believe to spring from the popular suspicion of the nature and purpose of the restraint and the seclusion medicinally used in the asylum or elsewhere. Although the restraint and the seclusion are necessary features of asylum treatment of this disease, it is important that all should know and remember that the asylum is not a prison where men and women are confined for crime—no more a prison than the hospital in which small-pox patients are confined until their going at large will do no harm. This wide-spread suspicion of our professional relations to the insane is doing harm—harm to the recent insane, whose treatment is thereby delayed until it is too late to cure,—harm to the friends of those already under treatment,—harm to the institution,—harm to the State, and this tide of suspicion can be stemmed only by the three great departments of our State government, each acting wisely and justly in its own sphere. If more safeguards are needed let the Legislature throw them around these poor unfortunates by additional legislation; if better inspection and stricter surveillance by State officers of the asylums be required, let it be immediately given; if judicial action be required to punish any thing found wrong, let the punishment be fearlessly inflicted. We do not propose or desire that the wrong done by medical men shall go unpunished; but if legal countenance and support to medical men, in the scientific, conscientious, and humane performance of their professional duties to the insane be demanded, we expect to get it. Let us know, too, just what our rights and immunities and duties shall be in this respect. Meanwhile what is the legal situation?

LEGAL OBSTACLES TO TREATMENT.

We have been recently judicially informed, by one of our State

courts, that "in the legislation," providing for the admission of *private* patients into the asylum, "*a great blank has been left.*" After twenty years of successful working under that law in this State, some forty years of similar success in eastern States, and about fifty of equal success in England, we are startled by the judicial announcement that the sick should not be restrained without their consent or a *judicial proceeding* to determine its necessity. It is further suggested by the court, that if the sickness be insanity the appointment of a guardian, under the decision of a commission *de lunatico inquirendo*, would be appropriate as a condition precedent to restraint,—and even a necessary precedent in such cases, unless parties are willing to risk liability to prosecution for depriving a citizen of liberty "without due process of law." It is admitted by the court that if the person's insanity be such as to make him dangerous to himself or to others, and (in case of suit for false imprisonment) if this degree of danger is proven by the defendants it is a legal justification of the confinement. With this police idea of confinement we have little to do; our question is *this:* is the restraint necessary to the proper medical care and treatment and cure of an insane person, such a deprivation of liberty that, unless authorized by "due process of law," *there is no legal justification for it?* If the final answer be yes, we wish to know it; if no, we also wish to know it.

DUE PROCESS OF LAW.

What is this "due process of law?" Is it always and of necessity a trial by jury? or in the case of one insane, is it by a commission *de lunatico inquirendo?* Is it even a purely judicial proceeding? Is it, of necessity, the proverbial "day in court?" Our Supreme Court—other courts also—say: "Temporary deprivations of liberty must often take place through the action of ministerial or executive officers or functionaries, or even of private parties, where it has never been supposed that the common law would afford redress."—*30 Mich., p. 211.* All the courts declare that if a person's conduct be dangerous to himself or others, anybody, whether an

official or not, is authorized to confine. This doctrine makes no distinctions or discriminations between the various causes of the dangerous conduct. It puts the debauchee on the same plane with the respected citizen bereft of reason,

"Upon whose pathway shone
All stars of Heaven, except the guiding one."

COMMON LAW RULINGS.

In the case of Josiah Oakes—the first case in the United States involving the natural right of relatives to care for their insane at home or in an asylum—Chief Justice Shaw of the Supreme Court of Massachusetts, in his decision affirming the right, bases it on "the great law of humanity which makes it necessary to confine those whose going at large would be dangerous to themselves or others. And the necessity which creates the law creates the limitation of the law;" and on the question of the duration of the restraint, he makes this important addition: "His restraint should last as long as is necessary for the safety of himself and of others, and *until he experiences relief from his disease of mind.*" He further says: "A man may be restrained in his own house [by his family or friends], or in a suitable asylum, but under the foregoing rules and limitations."

Judge Burnside of the Supreme Court of Pennsylvania, in the Hinchman case, holds this doctrine even more emphatically: "If the relations and friends conscientiously believe one of their number to be insane, it presents a case in which the patient may be placed by them in an asylum or hospital, *for the purpose of restoring him to health.*" Again he says "Insanity is a justification of arrest and of the confinement, *so long as it is necessary for the health and improvement of the insane person.*"

NATURAL LAW.

I do not profess, of course, to be an expert in law—diffidence here is becoming in me—especially in that department of it which is said to be "the perfection of human reason;" but

reason teaches me that the right of the sick to care, and of their friends to give it, is inherent and reciprocal in them under the great law of human nature. It is a law paramount to magna charta, and all constitutions and bills of rights, because it is both an *older* and a *higher law*. Bills of rights *create no rights* —they declare some rights that *exist*. Such rights, however, do not exist by virtue of any written law, and this *right*, as well as the reciprocal *duty* of friends and relatives to care for each other in sickness, become no more their right when declared than when undeclared by statute. If this be true, then that "great blank in our law" which consists merely of an omission of the statute to declare a great natural right or the precise mode of exercising it, becomes a matter of small consequence. I do not doubt the sufficiency of the law to punish any abuse that may be practiced under this natural right; but I deny the validity of any law that attempts to abrogate or abridge it, except for cause, and by "due process of law,"—whatever that may be.

Having thus vindicated, as best I could, my individual opinions upon the natural right of relatives to care for sick relatives and friends, in *their own homes*, I wish to add another thought.

THE NECESSITY OF AN ASYLUM.

Insanity differs from all other forms of disease in this: In ordinary sickness the patient, with friends to care for him, is better off and more likely to recover *at home* than anywhere else; while of the insane patient the reverse is true,—he is better off and much more likely to recover in an asylum or hospital. This being true, is it not evident that the friends who place a patient in an asylum, that he may receive this greater benefit, do but exercise, in the asylum and through its officers as their recognized agents, those rights which, when exercised at home, no reasonable person will question, unless the care be clearly inadequate or the right be abused? What necessity, therefore, that the right to thus utilize an asylum (furnished by the State for just such use), should be declared

by law, or that the law should make any provision about it except so far as may be necessary to secure the State from an illegal pecuniary burden? This provision our statute makes, and this, as it seems to me, is all that is required by the necessities of the case.

WHO DECIDES THAT INSANITY EXISTS?

But who shall determine the existence of insanity? This is a practical question sometimes full of difficulty to courts, lawyers, and doctors as well as others; and if some of the legal doctrines now commented on shall prevail, it is a question that is full of danger to physicians and to all who deal with the insane as patients.

Chief Justice Shaw (before quoted) on this question, in its relation to police regulation, says: "An insane person has no will of his own, hence the duty of others to provide for his safety and their own. Whose duty?" He asks and answers by saying: "Relatives if he have any—the nearer the better—strangers if necessary." The duties of magistrates and police officers, in this respect, are prescribed by statute. The right to restrain involves the right (but only for the time being) to determine the cause and the necessity of the restraint. But this doctrine of the common law devolves on the defendant the possible necessity of proving not only the insanity but the danger from it, in justification of the restraint. Insanity, under this doctrine, is no justification, unless the danger be proved. Proving the danger by the injury *done*, is too much like "locking the stable after the horse is gone" to be either wise or prudent. If this proof must be made before an ordinary jury, it will often fail to convince. If one, like Shakespeare's Ophelia, were before a jury, it might not be difficult to establish the *insanity;* but in the absence of overt acts to prove danger would the jury admit the *danger?* Experience teaches us to doubt the verdict; but the danger—the imminent danger—would nevertheless exist. Medical experience and observation, now tabulated, demonstrate that danger from

insanity exists in so large a majority of cases that there is no safety in any position which does not *assume the danger from the insanity*. This is proved to be so uniformly true of recent cases of the disease, that it is safe to declare as a general truth that *the onset of insanity is the beginning of danger*.* When the courts can be convinced by the facts that this is true and will so declare it—or if the Legislature, by a statutory enactment, will so declare it, an important step in advance will have been taken—a step which will do infinite good to the insane, and to their friends and to all others who are compelled to deal with them as patients.

The duty of declaring the existence of insanity for purposes of restraint or treatment, so far as prescribed by our statute, is definitely devolved:

1. *As to paupers*, on the superintendents of the poor and a reputable physician.

2. *As to indigent persons*, on judges of probate.

3. *As to private patients*, it is left to their friends or other persons of certified responsibility, and a reputable physician.

COURTS THE FINAL ARBITER.

But the exercise of this power under these circumstances, and for these purposes, and by the persons or officials named, is necessarily subject to review by the courts, if for no other reason, to prevent abuses of the power by wicked, or irresponsible, or ignorant persons.

The power to declare a person *non compos mentis*, by which he is relieved of moral responsibility for his acts, or deprived of the control of his property, being lodged, by law, with the courts, they, in the exercise of this power may, and sometimes must, review all preceding acts of those dealing with the insane persons under consideration. So that, in various ways, the temporary determination of insanity, for temporary purposes, is ultimately brought into the courts.

*See Appendix A.

POLICY OF ENGLAND TOWARDS INSANITY.

Without attempting to enumerate, much less discuss, any of the many questions which arise right here, except such as affect the rights and liabilities of physicians, and of others who deal with the insane as patients, I beg to call your attention, in this connection, to the policy of England towards her insane, and her insane asylums. It is a policy with her, older than our government, and one that has worked so well and for so long a time, that it is deserving of careful consideration. It is particularly interesting and important on the question of judicial interference in the treatment of the insane as patients, which was raised recently by one of our courts. This policy is so clearly and so admirably expressed by Sir Wm. Blackstone that I use his words. He says:

"On the first attack of lunacy, or other occasional insanity, while there may be hope of a speedy restitution of reason, it is usual to confine the unhappy objects in private custody, under the direction of their nearest friends and relatives; and the legislature, to prevent all abuses incident to such private custody, hath thought proper to interpose its authority *for regulating private mad-houses.*" [It will be borne in mind there were no public asylums in his day.] "But," he continues, "when the disorder is grown *permanent*, it is proper to apply for royal authority to warrant a lasting confinement." (By the theory of English law, the king is the natural guardian of idiots and lunatics—a function assumed, under our form of government, by the State, and—in all cases requiring judicial action—exercised by it through the courts.)

Applying this statement of a sound and humane policy—*mutatis mutandis*—to our own times and conditions, what does it mean?

In Blackstone's time the cure of insanity was unknown—indeed was not supposed to be possible; but insanity *was* known to be, in some cases, *of short duration;* but now a large majority are cured. An insane patient, therefore, while he is supposed to be curable or while medical treatment offers hope of

recovery, is left, under this policy, to the care of his friends in the asylum, *subject to the rules and surveillance*, while in the asylum, *of his natural or constitutional guardian—the State*. Extraordinary cases alone excepted, the courts, while the insane is under medical treatment, take no cognizance of him, nor is their action in his case or affairs advisable, until his malady has become permanent or there is little hope of recovery.

BETTER TO PREVENT THAN TO CURE ABUSES.

There is practical wisdom in the old adage that "an ounce of prevention is better than a pound of cure." The "cure" to which I now allude is not the cure of insanity, but that cure of a fictitious wrong supposed to be found in asylums, which is relieved by six thousand dollar verdicts. If it be better to prevent a theft than to recover the stolen property and punish the thief—if it be better to prevent a bruise than to cure it with expensive plasters, then, if mistakes *are* made in the admission of patients at the asylum (I will not even assume the existence there of deliberate abuses) if, I say, mistakes occur, it is better to prevent or correct them at once than to persist in them for months and years. While I shall not deny the possibility of mistakes of judgment in regard to a disease so difficult of diagnosis as insanity sometimes is, I do not hesitate to express my belief that the number of mistakes made is infinitesimally small; but, were they much more numerous or much more serious than I believe them to be, I should still more earnestly insist that it is better to prevent the mistake, (or, if you please, the wrong) as far as possible by State surveillance, than to cure it afterward; and infinitely better than to require, (as suggested by the court in the late Van Deusen case,) judicial permission to place an insane person in the asylum for treatment; for, it is not apparent why it should be necessary to have "a day in court" to prove this, any more than any other sickness; while it is apparent that, in recent insanity, the judicial proceeding will be repugnant to the feelings of friends, and injurious if not fatal to the patient.

Having thus challenged your attention to a policy of State surveillance of our asylums, it may be asked, how can it be accomplished? I answer it is *already accomplished;* it has been in use ever since the first opening of our asylum in 1859; but like all other regulations relating to the internal affairs of the asylum, it is not made conspicuous or demonstrative—perhaps not sufficiently conspicuous and demonstrative to quiet the apprehensions of the ignorant and the suspicious. What are the details of the plan in use?

THE POLICY OF MICHIGAN.

Each of the two asylums, in this State, is governed by a Board of six trustees, appointed by the Governor and approved by the Senate, from the intelligent and reputable citizens of the State, and representing, as equitably as possible, all sections of the State. The Boards are required to hold quarterly meetings at the asylum under their charge, and in addition to these meetings, some or all of the trustees are required to visit each institution monthly; at which times it is made their duty to carefully examine all parts and departments of the institution under their charge, and to make a monthly record of their approval or disapproval of its management and workings. At these meetings all cases of insanity recently admitted to the asylum are reported, and any questions regarding the mode or propriety of any admission are at once decided.

We have also a Board of State Charities, clothed with power to make, at any time, careful examination of, and to exercise supervision over, the Asylums for the Insane, including the power to inquire into alleged abuses and to recommend what further legislation, if any, is needed to increase their efficiency or prevent abuse.

Whenever the Legislature meets, its committees visit and inspect the asylum, its records and departments, and report to the Legislature the results of their observation. Many other provisions subsidiary to these main features, but too numerous to mention, express the anxiety of the State to fulfill its duties as the guardian of its feeble-minded citizens.

If this be not enough to give the requisite guaranty of good faith and good management on the part of asylum officers, the Legislature, in the exercise of its wisdom, can and will make the surveillance even more rigid (but not more conspicuous) by clothing existing boards with additional powers, or by the creation of a commission in lunacy, to be a body separate and distinct from the managing boards. But in doing this (if indeed it be necessary to do any thing more), they should be very careful not to impair the usefulness of the institutions to the nine hundred and ninety-nine properly and profitably there for the mere sake of preventing a question about the doubtful *one*.

I am fully of the belief that the present system is ample to provide for all real necessities and to prevent all real dangers to the rights of person or of property; but I do not believe that the present or any other system will altogether prevent suspicion and prejudice, especially when instigated and fomented by interest or malice. But if something must be done to give greater security, in the name of humanity let it be almost anything except a judicial decision to determine the necessity for asylum treatment. The reasons for this position are too numerous and too weighty and too obvious to need mention among medical men.*

NEWCOMBER VS. VAN DEUSEN.

I now take occasion to say that the topic of this address was suggested by a suit recently tried in the Circuit Court of Kalamazoo county of this State—entitled Newcomber *vs.* Van Deusen—in an action (as technically defined by the court) "for false imprisonment and assault and battery," the plaintiff having been a patient in the Insane Asylum at Kalamazoo, and the defendant, Dr. Van Deusen, having been, as you all know, its medical Superintendent.

The plaintiff claimed that she was sane and was illegally confined in the asylum; and therefore, Dr. Van Deusen was charged in the trial, not only with technical false imprisonment

*See Appendix B.

and assault and battery, but was also charged with conspiracy to confine and with damages for malpractice and maltreatment by him or his responsible agents. By a ruling of the court declaring a technical defect in the mode of admitting her into the institution, testimony was admitted tending to show damages to her from malpractice and maltreatment while thus under the alleged illegal duress.

The defense denied the sanity of the plaintiff, denied the conspiracy, denied the false imprisonment, and denied the malpractice and the maltreatment.

With all due respect to court and jury, I claim the right, as an individual citizen, to declare my belief (based on a full knowledge of the case as made) that the evidence, by an overwhelming preponderance, proved the plaintiff's insanity—proved that she was placed in the institution at the request and with the permission or approval of her nearest relatives—proved that there was neither conspiracy to confine, nor malpractice nor maltreatment during her confinement—proved that, instead of being injured, mentally or physically, by her confinement and treatment, her life in all human probability was thereby saved, and proved, furthermore, that when she was discharged (at the request of her friends by whose request she was placed there) her health and reason were both greatly improved.

But a verdict was rendered by the jury, assessing plaintiff's damages against the defendant at the sum of six thousand dollars.

The question naturally arises, if the evidence in the case proved the facts to have been as now claimed, how, or on what grounds, was such a vindictive verdict obtained?

To say nothing of the fact that the plaintiff was a woman and the defendant was a man and a State officer; to omit all discussion of the popular inability to determine, in most cases, the existence—especially, to determine from evidence, the *past* existence—of insanity; to refrain from all detail of the popular ignorance, and consequent prejudice (partly a consequence of former barbarism) regarding the asylum custody of the insane,

inflamed, too, as it has been, of late years, and for mercenary purposes, by highly wrought fiction, sensational literature and an unscrupulous press; to ignore the effect of untruthful statements, scattered broadcast over the State by patients discharged from the asylum half cured; to say nothing of that other class of falsehoods told by discharged and malicious or spiteful employés of the institution; refraining, I say, from all discussion or estimation of the effect of one, or any, or all of these several causes of prejudice or erroneous belief in the popular mind, including jurymen unconsciously biased by them before taking their seats in the jury box; and without undertaking to say (especially as I do not know), what influenced the jury in this case to render such a verdict, I will say for *myself* as an individual, that the only reasons I can find in the case, for any verdict adverse to defendant, even for a verdict of nominal damages, are two-fold:

1st. A technical statutory defect in the order of commitment; and,

2d. Certain legal and, as I believe, erroneous doctrines inculcated by the Court in the admission of evidence and in its charge to the jury.

To explain what I mean by a technical statutory defect in the order of commitment, it is necessary to say that the statute organizing the asylum and prescribing the mode of admitting patients divides those that may be admitted into three classes, viz.:

1st. *Pauper insane* who are admitted on the order of the county superintendents of the poor and at the expense of the county of which the pauper is a resident, and on the certificate of a physician that the pauper is insane:

2d. *Indigent insane* admitted on the certificate of the judge of probate for the county of which the insane person is a resident, made after an investigation by him to determine, on the evidence of two reputable physicians, the fact or the probable existence of the insanity, and, on other competent evidence, the further fact (manifestly the main purpose of his inquiry)

that the estate of the insane person or of his responsible friends is not sufficient to defray the entire expense of his board and care in the asylum:

3d. *Private insane* whose entire expense for board and care in the institution is defrayed from the estate or by the friends of the insane person, and who, by a by-law of the Board of Trustees made pursuant to the statute, may be admitted to the asylum on the certificate of a reputable physician declaring the person insane, and a bond obligating the payment of expenses given by two persons of certified responsibility.

The statute, in force in 1874, when the plaintiff in this case was admitted into the asylum, provided that the expense for the board of pauper and indigent patients should be charged to the counties at the same rate for both classes, but that private patients should pay $1.50 per week more than this uniform rate for those wholly or partly a county charge. This statutory difference in the expense of county and of private patients had developed throughout the State a practice which, though embarrassing to the Institution, its officers were powerless to prevent. The practice was this: the friends of private patients abundantly able to defray their own expense, having first made an arrangement with the county superintendents by which the county should be fully reimbursed, permitted their relative to be sent to the asylum *as a pauper* and a nominal county charge, on the order of the superintendents of the poor, by which arrangement the county lost nothing and the friends saved a dollar and a half a week. If the person so brought to the asylum, *in forma pauperis*, was, in the judgment of a reputable physician, an insane person, such an order from the county superintendents of the poor was, under the statute, conclusive as to the right to admit, and mandatory as to the amount to be charged for the board and care of the insane person so admitted.

Mrs. Newcomber, the plaintiff in this case, had, it seems, property sufficient to maintain her as a private patient in the institution; but she was brought to the Asylum by a superin-

tendent of the poor for Calhoun county, as a pauper, her friends having guaranteed the county against expense on her account. Her removal to the institution was also asked by her mother, sister, daughter, and son-in-law, and her insanity was certified by a reputable physician; so that the law of the institution was complied with in case she should be entered as a *private* patient; but she was admitted, in fact, as a pauper, on the written order of a superintendent of the poor for Calhoun county; but this order was signed by only one superintendent, while the law required the signature of two, or a majority of the superintendents for that county.

It was personally but unofficially known to the medical superintendent of the Asylum that *all three* of the superintendents for that county consented to and desired her admission as a nominal county charge; but, as before stated, the order for her admission was signed by one only, and by him after he had reached the Asylum with his charge. The fact that the order was signed by one, was held by the court to make the authority defective and her confinement under it was also held to be, *prima facie*, a wrongful detention of the plaintiff; and the confinement, being thus held to be unlawful, testimony was admitted in an effort to show damages for conspiracy, for false imprisonment, malpractice, and maltreatment by defendant or his agents.

It will be observed that had she been presented and received, as a *private patient*, the evidence of her insanity, as well as the right to receive her as a patient, was, under the asylum rules, full and conclusive.

It will be further observed that offered and received as she was, as a pauper patient, the *form* in which she was received determined nothing but the cost of her maintainance.

It will be observed, yet again, that no evidence was received or offered even tending to show bad faith, bad or improper conduct of any kind on the part of Dr. Van Deusen, but as the order admitting Mrs. Newcomber into the asylum was signed by one of the superintendents of the poor (the others consent-

ing but not present to sign), we are left to conclude that the verdict of $6,000 damages against Dr. Van Deusen was based on technical and not on substantial grounds.

On the questions relating to the ground and to the extent of damage in this case, I also venture to express, as an individual opinion, another thought:

Assuming that her friends had the right to care for her in sickness, and had the right to care for her at a hospital as well as at their home; and assuming further that restraint is an essential and necessary part of the medical treatment, whether given at home or in the hospital, Dr. Van Deusen was liable, if liable at all, not for false imprisonment as the medical superintendent of the asylum, but for malpractice as the responsible physician of the *hospital;* and if, in her treatment, he and his medical assistants had ordinary knowledge and skill in the treatment of insanity and used the necessary diligence in the application of it, he was not liable for *any* damage, especially as no damage was proved.

If this view of the case be valid it makes the verdict a clear violation of all principles of justice.

UNFOUNDED SUSPICIONS.

I have no doubt that the injustice, so apparent in the verdict given in this case, grew largely out of the fact that "there is a popular impression just now, that *sane* persons are not unfrequently shut up in hospitals under pretense of *insanity*, by their family or relatives in order that they may be the better able to perpetrate some wrong,—the officers and authorities of the hospitals, of course, aiding and abetting in the measure." One might suppose from the prevalence of this idea and the excitement caused by it, that a large part of the time and labors of asylum officers were expended in this nefarious business. On the practicability or possibility of a successful prosecution of such villainy, Dr. Ray, the distinguished author of the Jurisprudence of Insanity, says: "The idea that the confinement of the *sane* in hospitals for the *insane* is a common occurrence, implies only gross credulity and the profoundest

ignorance respecting these institutions; for however much it might serve the purposes of the parties concerned, it would be fatal to the interests of the hospital." A legislative inquiry into this matter, a few years ago, developed the fact that of 5,796 persons admitted into the Pennsylvania hospital for the insane, "not one was sane." Similar evidence was also obtained relative to the other asylums of the United States. The Earl of Shaftesbury, for many years president of the English lunacy commission, testified before Parliament, that "the notion of improper admissions or detentions is essentially wrong." The chief French officer in lunacy also says: "I have never known a single instance of arbitrary sequestration."*

ASYLUM ABUSES ALMOST UNKNOWN.

But if such outrages are as frequent as popular thought and feeling seem to indicate, why are there no more cases to be found in the records of our courts? It would seem that the law books should be full of them. I invite the attention of all members of the legal profession, who do me honor by their presence, to the fact that, with access to several large law libraries, I have, for months, as I had leisure, searched the available common-law records of all the States in the Union and their references, and I find but four cases, all told, in which such alleged illegal confinement in an asylum was the basis of suit; and in *not a single instance*, even in these four cases, *has a medical officer of a hospital for the insane been found in the slightest degree culpable!* So far, therefore, as I am able to find, the Circuit Court of Kalamazoo county in the State of Michigan, has the distinction of being the first court and the only court in the United States, to express, by a fine of $6,000 or any other amount, the popular indignation against medical officers of hospitals for the insane! This distinction, too, seems to have been achieved (as stated by the judge when refusing a new trial) "without the imputation of any intentional wrong on the part of defendant (Dr. Van Deusen) and none was claimed on the trial!" Such a result, under such circumstances,

* See Appendix C.

may not seem strange to our brethren of the legal profession, but to us simple-minded doctors, it is as puzzling as is a case of mysterious death to a coroner's jury.

who is dr. van deusen?

And who is the victim? Who is it that, "without the imputation of any intentional wrong," stands, to-day, before the American medical profession and the American people as the first and only victim of the popular vengeance against these asylum tyrants?

While yet very young, he was found standing in the very front ranks of asylum experts at the east. He was nominated by your Governor and confirmed by your Senate as the Medical Superintendent of the Michigan Asylum for the Insane at Kalamazoo. He made the plans for the buildings, he supervised much of their construction, and in 1859 he put the institution in operation; and now, after twenty years of self-sacrificing, self-denying labor, without a suspicion of cruelty, without a taint of unworthy or unkind action upon his official skirts; proved to be pure in impulse, pure in thought, and pure in action; tender and sensitive as a woman in the presence of affliction, though cool and brave as a man in action; admirable as an organizer; brilliantly successful in administration; distinguished by his scientific attainments, and his many virtues of head and heart; and, now, and above all else (in his retirement from labors that nearly cost his life), he is blessed, and with heart-felt blessings, by the thousands, who have been restored, through his agency, to home, to friends, to usefulness, and to reason. Such is the man, such the physician, such the State officer, and such the philanthropist who, having passed through the fiery furnace of twenty years of official life without so much as the "smell of fire on his garments" and without intentional fault or the imputation of it, now becomes the first victim, in this enlightened country, of a vulgar prejudice against asylums, and of the misapplication of the grand doctrine—originally promulgated to *defend* and not to *punish*

the good—the grand doctrine that "no person shall be deprived of liberty unless by due process of law!"

DANGERS TO MEDICAL MEN.

Gentlemen of the State Medical Society! Is it not time we studied our legal relations to our insane patients? Is it not time that all of us who make affidavit to an indigent person's insanity before a judge of probate; all of us who certify to the insanity of a private patient; all of us who accompany a patient to an asylum: is it not time that we were informed whether by so doing we make ourselves liable to a suit and to damages for *conspiracy to imprison?* Is it not time that the relatives and friends of an insane person, whom they place under asylum care and treatment, were definitely informed of their liability to suits for *false imprisonment* and to suits for *conspiracy?* If the patient, whom they have cared for ever so kindly, should for any reason be set at liberty half cured, and be fully possessed (as they generally are) with the idea that he is sane and always has been sane, and is the victim of injustice and outrage, the suit is liable to come, provided you or they have any estate to be plucked or plundered.

WHAT SHALL THE LAW BE?

Is it too soon to appeal to the two great coördinate law powers of the State,—the powers that make and construe law,—to consider the effect that such a state of things will have on the welfare of the people and on two of the great humane institutions of the State? In the language of Chief Justice Cockburn of England, may we not ask them "to consider these cases, not only with reference to the insane individuals committed to the care of medical men, but also with a view to their interests in another sense,—taking care not to impair or neutralize the energy and usefulness of medical assistance, by exposing medical men, unjustly, to vexatious and harrassing actions?" While they remember the patient, and others who must become patients, let them not forget society, nor those who must care for the patient.

APPENDIX.

NOTES FROM THE EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE OF THE ENGLISH HOUSE OF COMMONS ON THE LUNACY LAWS, 1877.

A.

THE RISKS AND DANGERS OF INSANITY.

The Earl of Shaftesbury, for many years the president of the English Lunacy Commission, was a prominent witness before the committee and was examined on many questions relating to the nature, the dangers, and the management of lunacy.

On the dangers of lunacy, he says: "I find that about 1,600 suicides were committed by persons at large, while the number committed by persons under care amounted to only 21; but the whole number of suicidal patients at present in the various asylums is 6,096; that return shows that unless they were under care and treatment they would, in all probability, or the greater proportion of them, have indulged in their propensity and would have committed suicide. We must also bear in mind that many of these suicidal cases have very strong homicidal tendencies."

Again he says: "On the 20th of March, 1877, there were 240 men and 87 women, in all 327, charged with murder, attempts to murder, and manslaughter. Of these 145 men are charged with murder, 98 with attempts, and 7 with manslaughter; 71 women were charged with murder, 12 with attempts, and 4 with manslaughter.

"Now this," he says, "is the history of these cases, and very remarkable it is. There were 145 men charged with murder. In 75 cases the insanity was not recognized before the commission of the crime; in 29 the insanity was recognized, but the persons were reputed harmless; in 33 the insanity and the persons were not regarded as altogether harmless, but insufficient precautions were taken; in 8 the exact circumstances are not known.

"Then we come to those who are charged with attempts at murder, maiming, or stabbing. In 42 the disease was not recognized before the commission of the crime; in 29 they were reputed harmless; of 12, insufficient care was taken; in 15, exact circumstances not known.

"When you come to the women, there are 71 charged with murder. In 28 the disease was not recognized before the commission of the crime; in 13 the insanity was recognized, but the persons were reputed harmless; in 23 the insanity was recognized, and the persons were scarcely harmless but insufficient precautions were taken.

"Then you come to the stabbing. In 4 the insanity was not recognized; in 6 they were reputed harmless; in 2 sufficient precautions were not taken.

"Now this is a very important matter, because it shows the very large number of cases in which, through inattention, the insanity is

not detected until the overt act is committed. That is the evil way in which a large proportion of the public judge of insanity. They will never hold a person to be insane till some overt act has been committed, and that is always, invariably, the case before juries. Then, the overt act having been committed, furnishes proof that the disorder is very far advanced, almost to be inveterate and consequently incurable. What I state shows the absolute necessity of great precaution, the absolute necessity of paying great attention to the earliest stage of the disorder; and though I could by no means render admission into the asylums more easy than it is, I most undoubtedly would not render it more difficult. We have always felt, as commissioners, that we have a double duty,—we have a duty to the patient and we have a duty to society."

B.

IS ANY CHANGE NECESSARY IN THE PRESENT ORDER OF ADMISSION?

The Earl of Shaftesbury, in his evidence, alludes to the singular feature in the act of 1845 permitting *any person* to sign the order of admission. He was the author of the act. He explains this feature and why it was not restricted to a relative, saying "it was because of the many in lodgings, inns, etc., from the country and abroad taken insane who had no relatives at hand." "I have no doubt," he says, "that we intended to make some bettter provision; but, strange to say, notwithstanding the law is so wide, and apparently so capable of abuse, I have not heard a single instance of a protest against it, or any mischief having arisen out of it." He recommends that the law stand as it is, with a view to meet emergencies, but would give the Commissioners in Lunacy power to substitute some one for the person signing the original order. He would leave it to any one the family might agree upon (if there be a family or friends accessible), the Commissioners to appoint the person thus selected.—Page 514.

When asked directly as to his views of the Scotch system of the interposition of a magistrate (page 518) and its incorporation with English law, he says: "I am sure it would be most repugnant to our tastes and feelings to have the civil magistrate interposing in these matters." "It would be no protection whatever." "I cannot conceive of any thing which to my mind would be worse. I will do any thing that I can in the world to protect the patient; but I know if I were to assent to do what is proposed I should assent to that which would be doing him an irreparable evil."

C. S. Percival, Secretary of the Commissioners in Lunacy, says: "In my opinion the medical certificates are the most important safeguards to the personal liberty of the subject, and the present forms are sufficient."—Page 461.

Dr. Fox says: "I do not think the intervention of a public officer would be of any material value at all to the liberty of the subject; it would oppose an additional difficulty to the earlier treatment of insanity, which is so very important."—Page 463.

Mr. Wilkes, Commissioner in Lunacy, says: "The present law is quite sufficient to protect the personal liberty of the people."—Page 465.

Dr. Lockhart Robertson would have as a Commissioner "a leading physician in the district (asylum district) to renew the medical certificates upon which the patient was originally admitted."—Page 467.

Dr. Bucknill says: "I think the principle should be to make the admission as easy as possible, to provide for early treatment."—Page 473.

Dr. Maudsley "was strongly of the opinion that the present forms for the admission of *private patients* are quite sufficient, and, if made more stringent, would operate injuriously on their early treatment and chances of recovery."—Page 490.

"If it is considered desirable, as I have heard suggested, that the medical certificates go before some public officer before they are acted upon, it seems to me no public officials would be better qualified than the Commissioners (of Lunacy) to whom exact copies are now sent within twenty-four hours. If the matter were really entered into in each case it would be a very anxious responsibility—a formidable matter to undertake—if not, it would simply become a mere matter of routine, which, adding to the publicity, and adding to the expense, and adding to the delay of getting a patient under care, would make *early treatment* more difficult than it is."—Page 491.

Question 3744: "You think that if there was more care taken, or more delay in admitting or consigning patients to asylums, their cure would be more doubtful?"

Ans.: "Undoubtedly; there are two great objects to be kept in view with regard to the detention of patients; they are put under care, not only for their own safe custody, because they are dangerous to themselves or others, but another and most important object, if insanity is to be cured, is, that they be put under care for *treatment*, and *early*, because recoveries are entirely in proportion to the early stage at which treatment is adopted. If regulations are made more stringent than they are now—and indeed the present regulations operate, to some extent, in that direction—the friends of patients will, instead of sending them from home, as is almost essential in a case of insanity—unlike in this respect other diseases—keep them at home under improper conditions, and so very much injure the chance of recovery."—Page 492.

"It is my experience as a physician that the friends shrink very much from that [going through forms]. They dislike the supposed publicity of it; they dislike the formally pronouncing him a lunatic; and they will not remove him from home in consequence."—Page 492.

Question 3761: "Do you agree in the opinion expressed by Dr. Williams, that the line of demarcation between sanity and insanity is by no means very distinct?"

Ans.: "It is like a line of demarcation between light and darkness—it is impossible to draw it."—Page 492.

Dr. Mortimer Granville says: "I think the best plan would be for a patient to be sent, under ordinary circumstances, *as to an ordinary hospital*, immediate notice being given to the Commissioners in Lunacy, who would instruct some official on their behalf to visit and certify to them the condition of the patient and the expediency of retaining him."—Page 502.

C.

Mr. Chas. P. Phillips, Commissioner in Lunacy, said: "In twelve years of experience as a Commissioner in Lunacy, *had not known a case where a person, being sane, had been improperly confined in an asylum.*"

By a resolution of the Society the Secretary was directed to furnish copies of the foregoing address to such daily papers as might desire to publish it, and to procure the publication of 2,000 extra copies in pamphlet form.

During the meeting the Committee on Practice of Medicine, Physiology and Hygiene reported resolutions offered by Dr. J. H. Beech, of Coldwater, and after remarks by Drs. Beech, French, and others, referring to cases of homicide and suicide committed by insane persons which had come under their observation, the resolutions offered by Dr. Beech were adopted.

On motion of Dr. Hamilton, of Tecumseh, they were ordered printed in the Transactions; and by an amendment offered by Dr. Cox they were ordered printed in connection with the 2,000 copies of the president's address which were ordered to be published in pamphlet form.

Resolved, That the frequent occurrence of homicide, infanticide, and suicide, by persons who had previously exhibited more or less evidence of mental aberration, calls for more stringent regulations in regard to the care of such persons, and protection of themselves and the unwary from their irresponsible acts.

Resolved, That the medical profession, as individuals, coming more frequently than other citizens to early knowledge of mental wanderings, are morally responsible for every neglect to give warning of danger, and should in no case allow the pride or influence of friends to prevent timely public admonition and control.

Resolved, That whilst it is of great importance that the laws protect every rational human being in their freedom, liberty, and rights, untrammeled by the caprice, avarice, or misjudgment of others, it is equally important that the law should *not* be clothed with terrors of prosecutions for errors committed without malice or foul-craft, to a degree which may deter conscientious men from duty in regard to the care of persons of doubtful sanity.

Resolved, That this Society hereby respectfully call the attention of Michigan State Board of Health to this subject, and do recommend that it warn the public of the frequent danger of retaining partially insane friends at their homes and give to the public clear views of the hope of recovery by early treatment in proper institutions.